



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT HOMABAY

ELC OS NO. E002 OF 2021

CLEMENT LAWRENCE ODHIAMBO.....APPLICANT

-VERSUS-

OMOL CHUMA.....RESPONDENT

RULING

1. On 10th November, 2021, the applicant, Clement Lawrence Odhiambo through M/S. Nyauke and Company Advocates filed an application by way of a Notice of Motion dated at November 2021, pursuant to Order 51 Rules 1 and 2 Orders 41 Rules 1 and 2 as well as section 3A, 1A of the Civil Procedure Act . He is seeking the orders infra:

a) The honourable court be pleased to allow the Applicant to serve the respondent by way of substituted service through the Standard newspaper.

b) The costs of this application be provided for in favour of the Plaintiff/Applicant.

2. The application is further anchored on a nine (9) paragraphed supporting affidavit of the applicant annexed thereto. The applicant deposed interalia, that he has filed the present suit by way of an originating summons dated 26th October, 2017 together with summons to enter appearance to be served on the Respondent whose physical address, Postal address and telephone number are unknown. That the application be granted in the interest of justice.

3. I have considered the application in its entirety. So, are the orders sought therein merited?

4. Indeed, this court has the inherent and special powers to grant orders to meet the best ends of justice as noted in all the provisions of the law cited on the face of the application, See also **section 3 of the Environment and Land Court Act, 2015 (2011)**.

5. By the originating summons, the applicant is claiming to have acquired a portion measuring Zero decimal four two hectares (0.42 Ha) in area of the suit land, LR. No. Kanyada/Kalanya/Kanyango/881 by way of adverse possession. Pursuant to the provisions of the law cited on the originating summons and **section 13(1) of the Environment and Land Court (ELC) Act 2015(2011)**, this court has the requisite mandate to entertain this dispute.

6. The instant matter has to be heard and determined on its merits; see **Philip Keipto Chemwolo and another –versus Augustine Kubende (1986) eKLR**.

7. On that score, the Respondent Omol Chuma has to be served with the suit papers to enable him appear or decline to appear herein; see the case of **Ogada versus Mollin (2009) KLR 620**

8. Moreover, expeditious delivery of justice is bound to be realized by the mode of service sought in the application commanded by Article **159(2) (b) and (e) of the constitution of Kenya 2010**.

9. A fortiori, I find the application dated 9th November, 2021 and duly filed on 11th November 2021 meritorious. I proceed to allow the prayer for substituted service in the terms sought therein and as stated at paragraph 1 (a), hereinabove.

10. Costs of the application be in the cause.

G.M.A ONG'ONDO

JUDGE

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 15TH DAY OF NOVEMBER, 2021.

In the presence of:

Applicant:-Absent

Respondent: Absent

Court Assistant: Okello -Present

G.M.A ONG'ONDO

JUDGE